

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN DIMMICK,

Plaintiff,

No. C 05-0971 PJH

v.

FINAL PRETRIAL ORDER

UNITED STATES OF AMERICA,

Defendant(s).

Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure, this final pretrial order is hereby entered and shall control the course of the trial unless modified by a subsequent order. The joint pretrial statement of the parties is incorporated herein except as modified by the court's ruling on the pretrial motions and objections.

I. MOTIONS IN LIMINE

Plaintiff:

A) Motion to preclude cross-examination of Dr. Green due to improper ex parte contact by government counsel is DENIED for lack of admissible evidence and a clearly articulated and cognizable legal basis, and because it is an inappropriate sanction for the alleged violation. Nonetheless, given the importance of the issue, in accordance with the court's ruling on the record, plaintiff is afforded the opportunity to re-brief the issue. Plaintiff's opening brief, if any, is due **no later than Thursday, September 28, 2006**. In accordance with this court's standing order and the local rules, plaintiff's counsel shall deliver a chambers copy of that brief to Judge Hamilton's chambers **no later than noon on Friday, September 29, 2006**. Defendant's response is due **no later than Thursday, October 5, 2006**. **No reply may be filed**. In accordance with this court's standing order and the local rules,

1 defendant's counsel shall deliver a chambers copy of that brief to Judge
2 Hamilton's chambers **no later than noon on Friday, October 6, 2006**. The
3 parties are advised that failure to timely deliver chambers copies may result in
4 the court's striking the brief.

- 5 B) Motion to preclude purported verbal disclosures by certain doctors which are
6 not noted in the medical records is DENIED. The doctors will be allowed to
7 testify as to such information, and plaintiff's counsel will be afforded the
8 opportunity to cross-examine the doctors and argue against the reliability of
9 such testimony.

10 **Defendant:**

- 11 C) Motion to preclude plaintiff from submitting at trial, testimony or other
12 evidence of damages other than emotional distress, is DENIED as the court is
13 unclear as to what exactly is sought by this motion. It appears that the
14 government seeks to preclude testimony regarding plaintiff's neuropathy
15 because no expert has been designated to testify on this issue. In
16 accordance with this court's ruling on the record following discussion of the
17 issue, to the extent plaintiff's treating physician will offer both percipient and
18 opinion testimony, he will be permitted to testify only to opinions formed
19 based on his course of treating the plaintiff.
- 20 D) Motion to preclude plaintiff from resurrecting claims that have been dismissed
21 is DENIED as the court is similarly unclear as to what is sought by this
22 motion. However, in accordance with this court's ruling on defendant's motion
23 for summary judgment, the parties are advised that plaintiff's surviving
24 negligence claim is based on a failure of the government to obtain his
25 informed consent and is not limited to the issue of whether such consent
26 was in writing as there is no allegation remaining in the case that written
27 consent was or provided or required.
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1 II. EXHIBITS

2 A) The Drum declaration will not be admitted as an exhibit; the witness may
3 testify at trial.

4 B) Plaintiff's entire medical file will not be admitted as an exhibit, rather the
5 parties shall submit excerpts from the record as needed.

6 C) No exhibits shall be admitted without a sponsoring witness.

7 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8 The parties will be permitted to revise their pretrial filings with references to
9 testimony actually given at the trial, within **one week** following the conclusion of the trial,
10 filings to be made simultaneously.

11 IV. TRIAL SCHEDULE AND TIME LIMITS

12 Each side will be permitted 6.5 hours of the allotted three trial days for direct and
13 cross-examination and any arguments.

14 IT IS SO ORDERED.

15 Dated: September 25, 2006

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PHYLLIS J. HAMILTON
United States District Judge